

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EZRA COHEN,

Plaintiff,

07Civ. 5834 (PKC)

-against-

ORDER

ELIAS HOROWITZ, et al.

Defendant(s).

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P. KEVIN CASTEL, District Judge:

On April 28, 2008, this Court entered an Order directing, inter alia, that the following be served upon plaintiff's counsel by May 9, 2008: "An affidavit or declaration under penalty of perjury and compliant with 28 U.S.C. § 1746 from Elias Horowitz stating that all document responsive to each category of plaintiff's document requests have been produced, except for those identified on the privilege log identified in paragraph 2." The same Order directed that: "The affidavit or declaration shall be filed with the Clerk of the Court."

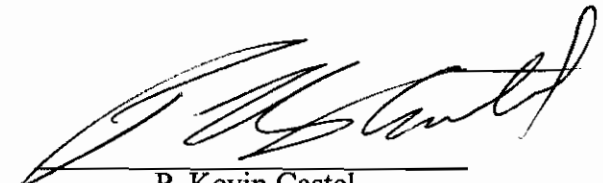
I have reviewed the docket of this Court and no such affidavit or declaration has been filed by Mr. Horowitz with the Clerk of Court.

Let defendant Elia Horowitz show cause in person on May 29, 2008 at 10:00 a.m. why he should not be held in contempt of Court and/or sanctioned under Rule 37, Fed. R. Civ. P., including, but not limited to, by the striking of his answer to the Complaint and the entry of a default judgment against him, for failure to comply with this Court's Order of April 28, 2008.

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Further, I have reviewed Mr. Rosengarten's letter of May 20, 2008. Contractual confidentiality with a non-party does not relieve a party of the obligation to produce documents lawfully requested in discovery. If defendant had believed that he was entitled to a protective order, his remedy would have been to seek such an order. He did not. Defendants' counsel shall fax a letter to Chambers by 10:00 a.m. May 28, 2008 responding to the May 20 letter.

SO ORDERED.


P. Kevin Castel
United States District Judge

Dated: New York, New York
May 21, 2008